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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,405	05/22/2006	Estevao Marino Espindola	04304/0203383-US0	1681
7278	7590	07/12/2007		
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER HANSEN, JAMES ORVILLE	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 07/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/549,405

Applicant(s)

ESPINDOLA ET AL.

Examiner

James O. Hansen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 1, the phrase “by actuation of a package portion applied to the latter” is unclear and confusing since it is not clear if the “package portion” constitutes a part of the invention as presently recited. As such, the claim does clearly set forth the metes and bounds of the patent protection desired. Additionally, it is unclear as to whether applicant is positively claiming a “cabinet” in combination with the “cabinet spacer”. The preamble does not specifically claim a cabinet, e.g. “A cabinet spacer to be applied to cabinets...”, but further down in the claim there appears to be a positive recital of structure (lines 4-5 for example, “a mounting end, coupled to the cabinet”) indicating applicant’s intent to positively claim the “cabinet” in combination with the cabinet spacer. Applicant is required to clarify the disclosed claimed material [either by amendments to the claims **or** by remarks in the response], making the language of the claims consistent with applicant's intent. Consequently, the remaining claims are rejected since they are dependent upon an indefinite claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:
A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by German publication DE9108356 [known hereafter as DE356]. The examiner has taken the position that a cabinet is being claimed in combination with the cabinet spacer.

DE356 (figures 1-6) teaches of a cabinet spacer (2) that is attached to a cabinet (5) of the type comprising a domestic electrical appliance, the device used on a rear face of the cabinet so as to maintain a minimum distance from an adjacent wall. The spacer comprising an elongated body (fig. 1) having a free end (end designated as 1), and a mounting end (narrow end as depicted in fig. 2), coupled to the cabinet and which is automatically displaced from an inoperative position (fig. 3), retracted close to the cabinet by actuation of a manual application as best understood by the examiner, to an operative position, in which the mounting end is maintained seated on the cabinet and the free end projects beyond the rear face of the cabinet (fig. 4), so as to be seated against an adjacent wall, guaranteeing a minimum distance of the cabinet in relation to the wall as readily apparent to the examiner. As to claim 2, the displacement of the body to the operative position is accomplished via manual manipulation. It is noted that gravity and a force from a user would be needed to lower the spacer to the operative position in the same manner that an initial force from a user and gravity would lower applicant's spacer [the position is taken that gravity alone would not trigger applicant's spacer to actuate to the operative position]. As to claim 3, the body, when in the inoperative position, would be longitudinally seated against the cabinet and maintained with its free end above the mounting end (note fig. 3). As to claim 4, the body has the mounting end eccentrically coupled to the cabinet in order to be

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displaced angularly downwardly from the inoperative position to the operative position as readily apparent to the examiner.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soros [U.S. Patent 1,445,726] in view of DE356. The examiner has taken the position that a cabinet is being claimed in combination with the cabinet spacer. Soros (figures 1-5) teaches of a cabinet spacer (fig. 2) that is attached to a furniture structure (33) and may be attached to a cabinet of the type comprising a domestic electrical appliance, the device used on a rear face of the furniture structure so as to maintain a minimum distance from an adjacent wall (fig. 1). The spacer comprising an elongated body (fig. 3) having a free end (end at element 30), and a mounting end (end adjacent to element 10), coupled to the furniture structure and which is automatically displaced from an inoperative position (shown in phantom in fig. 3), retracted close to the furniture structure by actuation of a manual application as best understood by the examiner, to an operative position, in which the mounting end is maintained seated on the furniture structure and the free end projects beyond the rear face of the furniture structure (shown in solid in fig. 3), so as to be seated against the adjacent wall, guaranteeing a minimum distance of the furniture structure in relation to the wall as readily apparent to the examiner. Soros teaches applicants inventive claimed spacer

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as disclosed above, but does not show the spacer attached to a cabinet. DE356 is cited as an evidence reference to show that it was known in the art to couple a spacer (2) to a rear portion of a domestic appliance cabinet (5) so as to provide a minimum distance from the cabinet to a wall. Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the use of Soros's spacer in view of DE356's teaching because this arrangement teaches that it was known to mount a pivoting spacer device to a cabinet in order to provide a safe distance from a wall. As such, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to vary the structure upon which the spacer is attached since a device is entitled to all its potential uses. As to claim 2, the displacement of the body to the operative position is accomplished via manual manipulation. It is noted that gravity and a force from a user would be needed to lower the spacer to the operative position in the same manner that an initial force from a user and gravity would lower applicant's spacer [the position is taken that gravity alone would not trigger applicant's spacer to actuate to the operative position]. As to claim 3, the body, when in the inoperative position, would be longitudinally seated against the cabinet [when modified] and maintained with its free end above the mounting end (note fig. 3 of Soros). As to claim 4, the body has the mounting end eccentrically coupled to the cabinet [when modified] in order to be displaced angularly downwardly from the inoperative position to the operative position as readily apparent to the examiner. As to claim 5, the mounting end incorporates a small "L" shaped projection (denoted by reference no. 21 – fig. 3), with a basic leg (vertical portion to the right of reference no. 23 – fig. 3) projecting to one of the sides of the elongated body and a free leg (denoted by reference no. 23 – fig. 3)

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projecting from the basic leg beyond the mounting end and having an end edge that can be retained in the cabinet [when modified].

Allowable Subject Matter

7. Claims 6-8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

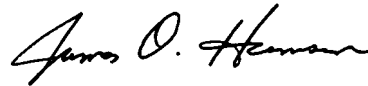
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Andrew, Sharrow, Stattel, White, Stouth and Yates describe spacers for various furniture structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can normally be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James O. Hansen
Primary Examiner
Art Unit 3637

JOH
July 2, 2007